IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.515 OF 2004

Mr Ravindersingh Arora and others ... Petitioners

v/s

The Menon Co-op. Bank Ltd. and others ... Respondents

Mr P.K. Dhakephalkar i/b Mr Rajeev Matkar for Petitioners.

Mr S.I. Memon for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 22ND NOVEMBER 2005.

P.C. :-

1. By this petition, the petitioners challenge the award made by the Sole Arbitrator dated 7th August 2004. The Arbitrator was appointed under section 84(4) of the Multi-State Co-operative Societies Act 2002. The respondent No.1 was claimant before the learned Arbitrator. The respondent No.1 is a Co-operative Bank registered under the Multi-State Co-operative Societies Act 2002. Admittedly, an objection was raised by the petitioners to the jurisdiction of the learned Arbitrator to entertain the proceedings in view of the provisions of Recovery of Debts due to Financial Institutions Act 1993. According to the petitioners, in view of the said Act, the provisions of Multi-State Co-operative Societies Act 2002 for recovery of debts advanced by the Co-operative Banks could not operate and the banks have to go to the Debt Recovery Tribunal for recovery. The petitioners have relied on a judgment of the Division Bench and Full Bench of this Court. It is admitted position before me that such objection was raised before the leaned Arbitrator. Perusal of the award also shows that the learned Arbitrator has mentioned in his award that such an objection to the jurisdiction was raised and the judgment of Full Bench of this Court has been relied on, but it is clear from

the award that the learned Arbitrator has not decided that point. Though the learned Arbitrator has made reference to the interim order passed by him in favour of the respondents wherein he has observed that despite the judgment of the Full Bench of this Court, they an application for interim relief before him is maintainable but that will not in any case amount to a decision on the preliminary issue of jurisdiction raised by the respondents. The learned counsel appearing for respondents submits that if according to the learned Arbitrator, because the judgment of Full Bench of this Court has been stayed by the Supreme Court he was not bound by that judgment, then it was for the learned Arbitrator to decide the objection raised to his jurisdiction without referring to the judgment of the Full Bench. The learned Arbitrator could not have just ignored the objection raised by the petitioners. The learned counsel appearing for respondents, on the other hand, submits that the judgment of the Full Bench has been stayed by the Supreme Court with the intention that the Co-operative Banks could continue to make recovery of the debts advance by them by adopting the remedy provided by the Multi-State Co-operative Societies Act 2002 and therefore, according to the learned counsel, the learned Arbitrator has the jurisdiction to make the award. It is difficult to agree with the argument advanced by the learned counsel appearing for

respondents. However, even assuming that on such a reasoning, jurisdiction can be assumed by the learned Arbitrator, it was for the learned Arbitrator to reject the objection to his jurisdiction raised by the petitioners, may be by adopting the submission advanced by the learned counsel appearing for respondents. In any case, in my opinion, the award made by the learned Arbitrator assuming jurisdiction on the subject matter without deciding the objection that was raised by the petitioners to his jurisdiction is an infirm award and therefore is liable to be set aside. In the result therefore, petition succeeds and is allowed, the award impugned in the petition is set aside. The respondents are directed to pay costs of this petition to the petitioners as incurred by the petitioners.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.